

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
WASHINGTON AT SEATTLE

PENSO TRUST COMPANY CUSTODIAN FBO
JEFFREY D. HERMANN, IRA ACCOUNT
NUMBER 20005343.

Plaintiff.

v.

LORINA DEL FIERRO; FIA CARD SERVICES, INC.; UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE; AND PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT.

Defendants.

Case No. 2:16-cv-01926-RSM

STIPULATION AND ORDER
FORECLOSING INTEREST AND
DISMISSAL OF THE UNITED
STATES INTERNAL REVENUE
SERVICE

Penso Trust Company Custodian FBO Jeffrey D. Hermann, IRA Account Number 20005343 (“Plaintiff”), by and through its attorney Kimberly Hood of Robinson Tait, P.S. and the Defendant the United States of America, on behalf of the United States Internal Revenue Service (“IRS”), by and through its attorneys Annette L. Hayes, United States Attorney for the Western District of Washington and Kerry J. Keefe, Assistant United States Attorney for said District, hereby present this Stipulation and Order regarding the dismissal of the IRS in the real property described in Plaintiff’s Complaint.

STIPULATION

Plaintiff and Defendant, IRS, stipulate and agree as follows:

(a) That Plaintiff, pursuant to the Complaint, holds an interest superior to that of the IRS in the subject property commonly known as 4009 Southwest 323rd Street, Federal Way, WA 98023, and legally described as follows:

LOT 83, TWIN LAKES NO. 4, ACCORDING TO THE PLAT THEREOF
RECORDED IN VOLUME 91 OF PLATS, PAGES 44 THROUGH 46. RECORDS OF
KING COUNTY, WASHINGTON.

Assessor's Parcel Number: 8731960830

Hereinafter referred to as the “Subject Property.”

(b) That Plaintiff claims an interest in the Subject Property pursuant to the Assignment of Deed of Trust re-recorded on January 22, 2015 under King County Auditor's File No. 20150122001671; *See Exhibit G to Complaint*; and

(c) That the United States Internal Revenue Service recorded a Notice of Federal Tax Lien that attached to the Subject Property with the King County Auditor's Office on May 10, 2013, (Auditor's File No. 20130510001639); and

(d) That the parties agree the interest of the IRS in the Subject Property is a valid and subordinate interest to that of the Plaintiff's interest and that the interest of the IRS may be foreclosed upon in this action; and

(e) That Plaintiff will not obtain a money judgment against Defendant IRS; and

(f) That Defendant IRS shall retain (1) its rights of redemption, if any; (2) the right to make claims upon any surplus proceeds with regard to its interest under the federal tax lien recorded with the King County Auditor's Office on May 10, 2013, (Auditor's File No. 20130510001639); and (3) its right to the monies directly relating to the homestead exemption, if this exemption is applicable; and

(g) That the Final Judgment and Decree of Foreclosure shall foreclose this interest of the United States in the Subject Property and will provide that Defendant IRS shall (1) retain any rights of redemption pursuant to 26 U.S.C. § 6323(a) and 28 U.S.C. § 2410 (c), that it may have; (2) retain its right to make claims upon any surplus proceeds; and (3) retain its right to the monies directly relating to the homestead exemption, if this exemption is applicable; and

1 (h) That this Stipulation will only be effective if the Subject Property is foreclosed
2 upon by Final Judgment and Decree of Foreclosure in this action. If the Subject Property is not
3 foreclosed upon, this Stipulation will have no legal or equitable effect; and

4 (i) That proceeds from any sheriff's sale of the Subject Property shall first be
5 applied to the costs of the sale, then toward the satisfaction of Plaintiff's judgment herein and
6 its attorneys' fees and cost. Any surplus funds that may remain are to be paid into the Court's
7 Registry to be disbursed to whoever may be lawfully entitled, including the United States,
8 according to the relative priority of the junior lienholders; and

9 (j) That Defendant IRS shall be dismissed from further participation in this action;
10 and

11 (k) That the Plaintiff shall provide to the United States the following: (1) Copy of
12 the title report; (2) A copy of the Final Judgment and Decree of Foreclosure; (3) Notice of the
13 date of any sale of said Subject Property; (4) Copy of the Notice of Sheriff's Sale; (5) Notice of
14 the sale results, including the purchase price and the purchaser's name and address; and (6)
15 Notice relating to the existence of Surplus Proceeds, by mailing each such document to (1) U.S.
16 Attorney's Office, Attn: Kerry J. Keefe, 700 Stewart Street, Suite 5220, Seattle, WA 98101;
17 and to (2) Internal Revenue Service, Attn: Jamie Bent, Advisory Group Manager, 915 Second
18 Avenue, MS W-245, Seattle, WA 98174.

19 (l) That the parties hereby acknowledge and agree that each side shall pay their
20 own fees and costs associated with this action.

21 **ROBINSON TAIT, P.S.**

22 By: s/ Craig Peterson
23 Craig Peterson, WSBA #15935
24 Attorney for Plaintiff

25 **ANNETTE L. HAYES**

26 United States Attorney

27 By: s/ Kerry Keefe
28 KERRY J. KEEFE, WSBA #17204
 Assistant United States Attorney
 Attorney for the Internal Revenue Service

ORDER REGARDING FORECLOSING INTEREST OF THE
U.S. DEPARTMENT OF TREASURY INTERNAL REVENUE SERVICE

Based upon the foregoing Stipulation between Penso Trust Company Custodian FBO Jeffrey D. Hermann, IRA Account Number 20005343 by and through its attorney of record, Kimberly Hood, and Defendant United States of America, Internal Revenue Service (“IRS”), by and through its attorney of record, Kerry J. Keefe, Assistant United States Attorney, and the Court having been fully advised,

IT IS ORDERED that the Final Judgment and Decree of Foreclosure, to be entered later, shall reflect (1) that the interest, if any, of the United States Internal Revenue Service, in the Subject Property described in Paragraph (a) of the foregoing Stipulation, shall be foreclosed; (2) that the IRS shall retain any rights of redemption, pursuant to 26 U.S.C. § 6323(a) and 28 U.S.C. § 2410 (c), that it may have; (3) that the IRS shall retain its rights to make claims upon any surplus proceeds; (4) that the IRS shall retain its right to the monies directly relating to the homestead exemption, if this exemption is applicable; and (5) that the IRS shall be dismissed from this action.

DATED this 17th day of February 2017.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

Presented by: ROBINSON TAIT, P.S.	Agreed, Notice of Presentation Waived: ANNETTE L. HAYES U.S. ATTORNEY
By: <u>s/ Craig Peterson</u> Craig Peterson, WSBA #15935 901 Fifth Avenue, Suite 400 Seattle, WA 98164 Phone: (206) 676-9640	By: <u>s/Kerry Keefe</u> KERRY J. KEEFE, WSBA #17204 Assistant United States Attorney 700 Stewart Street, Suite 5220 Seattle, WA 98101 Phone: (206) 553-7970 Fax: (206) 553-4067